

Appl. No. 09/823,459
Amendment Dated 12/22/2004
Reply to Office Action of September 22, 2004 (Paper No. 11)

Remarks

Claims 1-3 and 5-34 remain in the Application. Favorable reconsideration and allowance of the standing claims are respectfully requested.

At page 3, paragraph 4 of the Office Action claims 5, 8, 11 and 29-32 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by WO 01/20856 (Bergenwall). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Applicant respectfully submits that the Office Action has failed to establish that Bergenwall is a potential reference under 35 U.S.C. § 102 (e). A WIPO publication of an international application may potentially be applied as a reference under 35 U.S.C. § 102 (e), *inter alia*, if the international application has an international filing date on or after November 29, 2000. If the international application has an international filing date prior to November 29, 2000, however, the WIPO publication may not be applied under 35 U.S.C. § 102 (e). See MPEP 706.02(f)(1)(I)(C)(3)(b), for example. Bergenwall has an international filing date of April 17, 2000. Since the international filing date of April 17, 2000 for Bergenwall is prior to November 29, 2000, Bergenwall does not comprise a reference under 35 U.S.C. § 102 (e). Accordingly, removal of the anticipation rejection based on Bergenwall is respectfully requested.

Claims 1-3, 6, 7, 9, 10, 12-28 and 33-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bergenwall in combination with various documents.

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Applicant respectfully traverses the rejections, and requests reconsideration and withdrawal of the obviousness rejections.

Since Bergenwall does not comprise a reference under 35 U.S.C. § 102 (e), it follows *a fortiori* that Bergenwall does not comprise a reference under 35 U.S.C. § 103(a). Accordingly, removal of the obviousness rejections based on Bergenwall is respectfully requested.

For at least the above reasons, Applicant submits that claims 1-3 and 5-38 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

It is believed that claims 1-3 and 5-34 are in allowable form. Accordingly, a Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-3387 to discuss any matter concerning this application.

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The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040

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12400 Wilshire Blvd., 7th Floor
Los Angeles, California 90025

CERTIFICATE OF FACSIMILE TRANSMISSION

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